

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE BOARD OF MILK CONTROL AND TRANSFERRING ITS FUNCTIONS TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 81-23-101, 81-23-104, 81-23-202, 81-23-204, 81-23-302, 81-23-303, 81-23-405, AND 81-23-406, MCA; REPEALING SECTION 2-15-3105, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 81-23-101, MCA, is amended to read:

**"81-23-101. Definitions -- assignment of milk to class.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(a)~~ "Board" means the board of milk control provided for in 2-15-3105.

~~(b)~~(a) (i) "Class" refers to the classes of utilization of milk that the department shall define by rule.

(ii) In adopting rules under this subsection ~~(1)(b)~~ (1)(a), the department shall use the current definitions of classes of utilization of milk that are found in Title 7 CFR, part 1000.40, except that the department may combine any of the classes of milk provided for in the federal definitions into a single class.

~~(c)~~(b) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

~~(d)~~(c) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

~~(e)~~(d) (i) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors.

(ii) The term, ~~however, excludes~~ does not include a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(f)~~(e) "Licensee" means a person who holds a license from the department.

~~(g)~~(f) "Market" means an area of the state designated by the department as a natural marketing area.

~~(h)~~(g) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise

1 processed and all of which are designated as grade A by a constituted health authority and including those  
2 secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any  
3 health authority of this or any other state or nation.

4 ~~(h)~~(h) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated  
5 by the department of corrections at the Montana state prison.

6 ~~(i)~~(i) "Producer" means a person who produces milk for consumption in this state, selling it to a  
7 distributor.

8 ~~(j)~~(j) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a  
9 distributor.

10 ~~(k)~~(k) "Producer-distributor" means a person both producing and distributing milk for consumption in this  
11 state.

12 ~~(m)~~(l) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for  
13 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,  
14 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and  
15 universities, and both public and private institutions and instrumentalities of all types and description.

16 (2) The department may assign new milk products to the class that the department considers proper."  
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18 **Section 2.** Section 81-23-104, MCA, is amended to read:

19 **"81-23-104. Rules and orders.** The department may adopt and enforce rules and orders necessary to  
20 carry out the provisions of this chapter and any orders adopted under it by the department ~~or the board~~. A rule  
21 or order ~~shall~~ must be posted for public inspection in the main office of the department for 30 days, and a copy  
22 ~~shall~~ must be filed in the office of the department. A copy ~~shall~~ must also be sent by ~~registered or~~ certified letter  
23 to the secretary of each area, except in the case of an order directed only to a person or persons named in it ~~the~~  
24 order, which ~~shall~~ must be served by personal delivery of a copy or by mailing a copy to each person to whom  
25 the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a  
26 summons may be served in accordance with laws of this state. The posting, in the main office of the department,  
27 of a rule or order not required to be personally served as provided in this section and the filing in the office of the  
28 department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted  
29 and filed or served, as provided in this section, has the force of law."  
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1           **Section 3.** Section 81-23-202, MCA, is amended to read:

2           **"81-23-202. Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor, or  
3   jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first  
4   having obtained a license from the department, as provided in 81-22-202, or, in the case of milk entering this state  
5   from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and  
6   Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license  
7   from the department is \$2 and is due before July 1 and must be deposited by the department in the general fund.  
8   The license required by this chapter is in addition to any other license required by state law or any municipality  
9   of this state. This chapter applies to every part of the state of Montana.

10           (2) In addition to the annual license fee, the department shall, in each year, before April 1, for the  
11   purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers,  
12   producer-distributors, and distributors as follows:

13           (a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by  
14   a producer-distributor;

15           (b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

16           (c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor,  
17   excepting that which is sold to another distributor.

18           (3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels  
19   sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may  
20   not be more than one-half the fee assessed on a producer-distributor.

21           (4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a  
22   fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the  
23   department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the  
24   department. The fee must be established pursuant to 81-1-102(2).

25           (b) A person licensed by the department shall report to the department on a monthly basis the volume  
26   of milk produced. All reporting documentation must be submitted on forms approved or provided by the  
27   department.

28           (5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly  
29   before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be  
30   computed by applying the fee designated by the department and the fee established in subsection (4) to the

1 volume of milk sold in the preceding calendar quarter.

2 (6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation  
3 of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must  
4 be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment that was  
5 due.

6 (7) All assessments required by this chapter must be deposited by the department in the state special  
7 revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and  
8 assistants, ~~per diem and expenses of board members~~, and all other disbursements necessary to carry out the  
9 purpose of chapter 22 and this chapter, must be paid out of the ~~board~~ money in that fund.

10 (8) The department may, if it finds the costs of administering and enforcing this chapter can be derived  
11 from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

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13 **Section 4.** Section 81-23-204, MCA, is amended to read:

14 **"81-23-204. Declining, suspending, and revoking licenses -- penalties in lieu of suspension or**  
15 **revocation.** (1) The department may refuse to grant a license or may suspend or revoke a license already  
16 granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any  
17 lawful order or rule of the ~~board~~ or department, the failure or refusal to make required statements or reports, or  
18 failure to pay license or assessment fees are causes for which the department may suspend or revoke a license.

19 (2) In place of suspension or revocation of a license, the department may assess a civil penalty not to  
20 exceed \$500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter  
21 or of any lawful order or rule of the department ~~or board~~. If the person against whom a civil penalty is assessed  
22 fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the  
23 district court of the first judicial district. This penalty ~~shall~~ must be construed as civil and not criminal in nature.  
24 Any ~~moneys~~ money received by the department as a result of collection of civil penalties ~~shall~~ must be paid into  
25 the state special revenue fund as provided by 81-23-403."

26  
27 **Section 5.** Section 81-23-302, MCA, is amended to read:

28 **"81-23-302. Establishment of minimum prices.** (1) The ~~board~~ department shall, by adopting rules, fix  
29 minimum producer prices for classes of utilization of milk as defined by the department.

30 (2) The ~~board~~ department shall establish prices by means of flexible formulas that must be devised so

1 that the formulas bring about automatic changes in all minimum prices that are justified on the basis of changes  
2 in production, supply, processing, distribution, and retailing costs.

3 (3) The ~~board~~ department shall consider the balance between production and consumption of milk, the  
4 costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum  
5 prices that are fair and equitable to producers and consumers may result.

6 (4) The ~~board~~ department shall, when publishing notice of proposed rulemaking under authority of this  
7 section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in  
8 particular, in determining costs of production and of the actual dollars and cents costs of production that  
9 preliminary studies and investigations of auditors or accountants in the department's employment indicate will  
10 or should be shown at the hearing so that all interested parties will have an opportunity to be heard and to  
11 question or rebut the considerations as a matter of record.

12 (5) Specific factors may include but are not limited to the following items:

13 (a) current and prospective supplies of milk in relation to current and prospective demands for milk for  
14 all purposes;

15 (b) the cost factors in producing milk, which must include among other things the prices paid by farmers  
16 generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers  
17 for dairy feed in particular, and farm wage rates in this state;

18 (c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include  
19 among other things the prices received by farmers for all products other than milk, the prices received by farmers  
20 for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state  
21 and federal agencies;

22 (d) the prices of butter, nonfat dry milk, and cheese;

23 (e) the need, if any, for freight or transportation charges to be deducted by distributors from producer  
24 prices for bulk milk.

25 (6) If the ~~board~~ department at any time proposes to base all or part of an official order establishing or  
26 revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be  
27 presented to it by the consuming public or the milk industry, the ~~board~~ department shall, when publishing notice  
28 of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the  
29 specific facts within its own knowledge that it will consider so that all interested parties will have an opportunity  
30 to be heard and to question or rebut the facts as a matter of record.

1 (7) The board department, after consideration of the evidence produced, shall make written findings and  
2 conclusions and shall fix by ~~official~~ rule the formula under which minimum producer prices for milk must be  
3 computed.

4 (8) This section may not be construed as requiring the board department to promulgate a specific  
5 number of formulas, but it must be construed liberally so that the board department may adopt a reasonable  
6 method of expression to accomplish the objective set forth in subsection (7).

7 (9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades,  
8 or uses ~~as that~~ the board department considers advisable and must specify the minimum prices for the forms,  
9 classes, grades, and uses.

10 (10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from  
11 Montana producers for the processing of products to be sold in this state if milk is available from Montana  
12 producers at the price set by the board department.

13 (11) The board department shall adopt rules to regulate transportation rates that distributors, contract  
14 haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk  
15 between plants may not be permitted unless it is found by the board department to be necessary to permit the  
16 movement of milk in the public interest. The board department may ~~promulgate~~ adopt rules regarding the  
17 requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated  
18 with those adopted pursuant to fair trade practices under 81-23-303.

19 (12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must  
20 be established by the board department after the producers and the distributors have been consulted.

21 (13) The board department may amend a rule in the same manner provided in this section for the original  
22 establishment of milk pricing formulas. The board department may ~~in its discretion~~, when it determines that the  
23 need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing  
24 formulas.

25 (14) Upon petition of a distributor or a majority of a distributor's producers, the board department shall  
26 hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as  
27 a method of payment by that distributor of producer prices. If the board department finds that the evidence  
28 presented at the hearing warrants the establishment of a base or quota plan, the board department shall proceed,  
29 by order, to establish the base or quota plan.

30 (15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon

petition by a licensed producer-distributor or distributor, the ~~board~~ department shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the ~~board~~ department shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the ~~board~~ department finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the ~~board~~ department shall proceed by order to establish the arrangement. An order is not effective until it is approved in a referendum conducted by the ~~board~~ department by mail among affected producers, producer-distributors, and distributors. The order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the ~~board~~ department finds it necessary, the ~~board~~ department may conduct more than one referendum on any order.

(b) The order of the ~~board~~ department establishing the statewide pooling arrangement may include other provisions that the ~~board~~ department considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the ~~board~~ department establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the ~~board~~ department gives written notice of its intended action and holds a public hearing.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment

1 of base or quota plans or statewide pooling arrangements.

2 (17) Rules adopted pursuant to this section must be enforced and audited for compliance by the  
3 department."

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5 **Section 6.** Section 81-23-303, MCA, is amended to read:

6 **"81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing fair  
7 trade practices as they pertain to the transaction of business among licensees under this chapter and among  
8 licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk  
9 supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302(11), fair trade practice rules  
10 must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair,  
11 unlawful, and not in the public interest:

12 (1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by  
13 a person, whether in the form of money or otherwise;

14 (2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide  
15 charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

16 (3) the extension to certain customers of special prices or services not available to all customers who  
17 purchase milk of like quantity under like terms and conditions;

18 (4) the payment of a price lower than the applicable producer price, established by the ~~board~~ department,  
19 by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state,  
20 or local government."

21  
22 **Section 7.** Section 81-23-405, MCA, is amended to read:

23 **"81-23-405. Violations made misdemeanors -- penalties.** (1) A person who produces, sells,  
24 distributes, or handles milk in any way, except as a consumer, without a license from the department as required  
25 by this chapter or who violates a ~~lawful~~ rule of the department or ~~board~~ is guilty of a misdemeanor punishable by  
26 a fine not exceeding \$600. Each day's violation is a separate offense.

27 (2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in  
28 all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both  
29 criminal and civil, ~~shall~~ must be tried in the district court.

30 (3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this



chapter."

**Section 8.** Section 81-23-406, MCA, is amended to read:

**"81-23-406. Additional remedies.** The department may begin any proceeding at law or in equity ~~as that~~ may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the ~~board or~~ department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the ~~board or~~ department in the name of the department of livestock, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in court."

NEW SECTION. **Section 9. Repealer.** Section 2-15-3105, MCA, is repealed.

NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2009.

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